

## **EMPLOYMENT AGREEMENT**

EMPLOYMENT AGREEMENT, effective as of January 12, 2001 (the "Effective Date") between Family Golf Centers, Inc., a Delaware corporation with offices at 538 Broadhollow Road, Suite 410E, Melville, New York 11747 (the "Company"), and Philip J. Gund, having an address of 45 Kaintuck Lane, Locust Valley, New York 11560 ("Employee").

The Company desires to engage Employee to perform services for the Company, any present or future parent, direct or indirect subsidiary, or affiliate of the Company, and any successor or assign of any of them (the "Corporations"), and Employee desires to perform such services, on the terms and conditions hereinafter set forth.

The Company filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on May 4, 2000.

Accordingly, the parties hereto agree as follows:

### **1. TERM**

The Company desires to engage Employee, and Employee agrees to serve, on the terms and conditions of this Agreement for a period commencing as of the Effective Date, and ending June 30, 2001 or such shorter period as may be provided for herein. The period during which Employee is employed hereunder is hereinafter referred to as the "Employment Period." Anything to the contrary contained in this Agreement notwithstanding, neither this Agreement nor any of the parties' respective rights and obligations under this Agreement shall be binding or effective until this Agreement has been approved by the Bankruptcy Court.

### **2. DUTIES AND SERVICES**

During the Employment Period, Employee shall be employed in the business of the Company and shall serve as the Chief Executive Officer of the Company, and shall also perform services in a responsible executive or managerial capacity for any of the other Corporations when and as requested by the Company. Employee agrees to his employment as described in this Section 2 and agrees to devote substantially all of his working time and efforts to the performance of his duties under this Agreement, excepting vacation time as provided by Section 4. In performing his duties hereunder, Employee shall be available for reasonable travel as the needs of the business require.

### **3. COMPENSATION; OTHER BENEFITS**

(a) As compensation for his services hereunder, the Company shall pay Employee \$82,500.00 per month on a deferred basis. Such compensation shall be paid to the Employee or his designee from the proceeds of sales of assets of the Company and its direct and indirect subsidiaries.

(b) Employee, as an officer and director of the Company, shall be covered under the Company's existing Directors, Officers and Corporate Liability Insurance Policy.

#### 4. EXPENSES

Employee shall be entitled to reimbursement for reasonable travel and other out-of-pocket expenses necessarily incurred in the performance of his duties hereunder, upon submission and approval of written statements and bills in accordance with the then regular procedures of the Company.

#### 5. REPRESENTATIONS AND WARRANTIES OF EMPLOYEE

Employee represents and warrants to the Company that Employee is under no contractual or other restriction or obligation which is inconsistent with the execution of this Agreement, the performance of his duties hereunder, or the other rights of the Company hereunder.

#### 6. INDEMNIFICATION

(a) The Company shall indemnify and hold harmless Employee from and against any and all losses, claims, damages, liabilities, penalties, judgments, awards, costs, fees, expenses and disbursements, including without limitation, the costs, fees, expenses and disbursements (including without limitation reasonable attorneys' fees), as and when incurred, of investigating, preparing or defending any action, suit, proceeding or investigation (whether or not in connection with proceedings or litigation in which Employee is a party) (any such amount being hereinafter sometimes referred to as an "Indemnifiable Loss"), directly or indirectly caused by, relating to, based upon, arising out of or in connection with the engagement of Employee as an officer or director of the Company or any of the other Corporations, or the performance by Employee of any services to or on behalf of the Company or any of the other Corporations, unless there is a final non-appealable order of a Court of competent jurisdiction, at the trial level, finding Employee directly liable for gross negligence, willful misconduct, breach of fiduciary duty, self-dealing or bad faith.

(b) If Employee is required to testify at any time, during the Employment Period or after the expiration or termination of this Agreement or the Employment Period, at any administrative or judicial proceeding relating to any aspect of such engagement, employment or services or his status or position as an officer or director of the Company or any of the other Corporations, then Employee (i) shall, if such testimony occurs after the Employment period, be entitled to be compensated by the Company for Employee's associated time charges at his regular hourly rates in effect at the time, or if then not applicable at a reasonable hourly rate, and (ii) shall be entitled to be reimbursed for all reasonable out-of-pocket expenses, including counsel fees.

(c) The Company has recently obtained a Directors, Officers and Corporate Liability Insurance Policy (the "Existing Policy") with at least \$10 million in coverage. Employee will be insured under such Existing Policy. The Company shall cause its

insurance broker to send copies of all documentation and other communications regarding the Existing Policy, including without limitation any renewal or cancellation thereof, to the attention of Employee. The Company shall maintain directors and officers liability insurance coverage comparable as to terms (including without limitation the provisions of the Existing Policy or any similar provision regarding extension of the discovery period thereunder) and amounts as that provided under the Existing Policy during the term of Employment Period, with any such replacement coverage being obtained from an insurer with a rating from a nationally recognized rating agency not lower than that of the insurer of the Existing Policy (the "Insurer"). Upon any cancellation or nonrenewal of the Existing Policy by the Insurer, the Company shall exercise its rights under clause 10 of the Existing Policy to extend the claim period for a one-year "discovery period" and shall exercise such rights and pay the premium required thereunder within the 30-day period specified therein. The Company shall use commercially reasonable efforts in connection with the next renewal of the Existing Policy, to negotiate to extend the discovery period of the Existing Policy from one to three years.

(d) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Employee may at any time be entitled under applicable law, the Company's certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(e) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Employee under any insurance policy or policies providing liability insurance for directors, officers, employees or agents of the Company or any of the other Corporations, and Employee shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(f) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Employee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

## 7. TERMINATION

Notwithstanding anything contained herein, either party may terminate this Agreement and the Employment Period for any reason or for no reason, upon three days prior written notice to the other party.

## 8. SURVIVAL

The provisions of Section 6 of this Agreement, the representations and warranties contained in this Agreement, and the parties' respective rights and obligations with respect to compensation amounts earned or accrued prior to the termination of Employee's employment hereunder, shall survive termination of Employee's employment hereunder.

## 9. ENTIRE AGREEMENT: MODIFICATION

This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements between them concerning such subject matter and may be modified only by a written instrument duly executed by each party.

## 10. NOTICES

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, or delivered against receipt to the party to whom it is to be given at the address of such party set forth in the preamble to this Agreement (or to such other address as the party shall have furnished in writing in accordance with the provisions of this Section 10). Notice to the estate of Employee shall be sufficient if addressed to Employee as provided in this Section 10. Any notice or other communication given by certified mail shall be deemed given three days after the time of certification thereof, except for a notice changing a party's address which shall be deemed given at the time of receipt thereof.

## 11. WAIVER

Any waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing, signed by the party giving such waiver.

## 12. BINDING EFFECT

Employee's rights and obligations under this Agreement shall not be transferable by assignment or otherwise, such rights shall not be subject to commutation, encumbrance or the claims of Employee's creditors, and any attempt to do any of the foregoing shall be void. The provisions of this Agreement shall be binding upon and inure to the benefit of Employee and his heirs and personal representatives, and shall be binding upon and inure to the benefit of the Company and its successors.

### 13. NO THIRD PARTY BENEFICIARIES

This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement (except as provided in Section 12).

### 14. HEADINGS

The headings in this Agreement are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

### 15. REMEDY

In the event that any term or provision of this Agreement shall be deemed by a court of competent jurisdiction, arbitrator or mediator, as the case may be, to be overly broad in scope, duration or area of applicability, the court, arbitrator or mediator, as the case may be, considering the same shall have the power and hereby is authorized and directed to modify such term or provision to limit such scope, duration or area, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited.

### 16. COUNTERPARTS; GOVERNING LAW

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of laws.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

FAMILY GOLF CENTERS, INC.

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
PHILIP J. GUND